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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540

3/11/88
PK-11

FILE: B-191986

DATE: June 16, 1978

MATTER OF: Eller & Company, Inc.

DIGEST:

Contracting officer has authority to accept at face value small business size certification by bidder in absence of timely protest against size status. Questioning of size status by contracting officer is a matter of discretion which we cannot say was abused in this case.

Eller & Company, Inc. (Eller) protests the award to Stevens Shipping and Terminal Company (Stevens) of contract No. DAHC24-78-D-0002 by the Military Traffic Management Command, Department of the Army.

The subject contract was solicited pursuant to a small business set-aside. Eller, a large business which did not submit a proposal for this procurement, protested to the Army after award, on the basis that Stevens did not qualify as a small business for this procurement. The Army forwarded Eller's protest to the Small Business Administration for determination and consideration in future actions. The Small Business Administration determined that Stevens was other than a small business, because the firm was affiliated with a parent company and the parent company failed to submit information pertaining to its size.

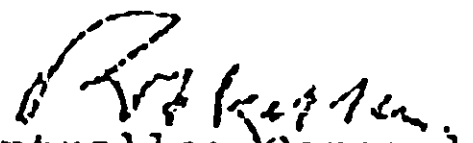
The protester argues that it acted in as timely a manner as possible once it was informed of the award of a negotiated contract to a firm it believed was not small. The protester believes it was the Army's responsibility, rather than that of another contractor, to research the validity of a firm's certification.

A representation by a bidder or offeror that it is small shall be effective unless a timely protest is received prior to award. Armed Services Procurement

Regulation (ASPR) 1-703(b) (1976 ed.). In the absence of such a protest a contracting officer has authority to accept at face value a certification by a firm that it is a small business unless the contracting officer has reason to question the firm's status and submits the matter to SBA for determination. ASPR 1-703(b)(2); Evergreen Funeral Home, B-184149, November 6, 1975, 75-2 CPD 282. Here, Eller's protest by telephone on March 21, 1976, was received after award was made on March 16, 1973. Although the contracting officer may protest the small business status prior to award, the contracting officer was not required to research the validity of the certification. The questioning of size status by a contracting officer is a matter of discretion which we cannot say was abused in this case.

Under these circumstances the award will not be questioned by our Office. TelePhicPhonics, Inc., B-181501, October 24, 1974, 74-2 CPD 227; Eancroft Cap Co., Inc., B-182926, January 2, 1976, 76-1 CPD 1. Where, as in this case, it is clear from the protester's initial submission that the protest is without legal merit, we will decide the matter on the basis of the protester's submission without obtaining a report from the procuring activity. See Western Branch Diesel, Inc., B-190407, December 21, 1977, 77-2 CPD 494 and cases cited therein.

Accordingly, the protest is summarily denied.


Acting Comptroller General
of the United States